

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. 97-111

NPDES PERMIT NO. CA0037842

AMENDMENT OF WASTE DISCHARGE REQUIREMENTS, ORDER NO. 93-117
FOR:

CITIES OF SAN JOSE AND SANTA CLARA
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
SAN JOSE
SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region
(hereinafter called the Regional Board) finds that:

1. On October 20, 1993 the Board adopted Order No. 93-117 (NPDES Permit CA0037842), reissuing waste discharge requirements to the Cities of San Jose and Santa Clara (hereinafter called the discharger) for their San Jose/Santa Clara Water Pollution Control Plant.
2. The State Water Resources Control Board (hereinafter called the State Board) and the Regional Board have found that freshwater effluent from the discharger's treatment plant contributes to the loss and degradation of endangered species (i.e. California clapper rail and salt marsh harvest mouse) habitat.
3. On October 4, 1990 the State Board adopted Order WQ 90-5. Order WQ 90-5 directed the Regional Board to limit flows from the San Jose/Santa Clara treatment plant to 120 million gallons per day (mgd) average dry weather flows or to flows that would not further impact rare and endangered species.
4. On March 6, 1991 the discharger submitted an "Action Plan", with a request that the "Action Plan" be accepted by the Regional Board as fulfillment of the State Board requirement for a discharge flow limit. A revised "Action Plan" was accepted by the Regional Board in Resolution 91-152, which is a request to the State Board to accept the "Action Plan" as fulfilling the intent of their requirement for a 120 mgd flow cap. By letter dated November 26, 1991, the State Board stated Resolution 91-152 is consistent with Order WQ 90-5.
5. In Resolution 91-152, the Regional Board stated that the San Jose Action Plan (revised), dated September 30, 1991, fulfilled the intent of the State Board Order WQ 90-5 requirement to limit flows from the San Jose/Santa Clara Water Pollution Control Plant to a level that will halt any further loss or degradation of endangered species habitat. The Regional Board also stated that it will hold a hearing to consider adopting a 120 mgd average dry weather effluent flow (ADWEF) discharge flow limit if delays occur that threaten the timely completion or implementation of reclamation projects, or if flows exceed 120 mgd ADWEF.
6. Provisions 5 and 6 of Regional Board Order No. 93-117 contain specific requirements for implementing the Action Plan related to wetland loss mitigation and wastewater recycling. Some of the requirements have already been complied with and others are no longer applicable; therefore, this Order amends and updates Provisions 5 and 6 of Order No. 93-117. This Order applies to, and supersedes, only Provisions 5 and 6 of Order No. 93-117.

7. On September 18, 1996 the Regional Board adopted Resolution 96-137, which accepted the discharger's proposal for wetland loss mitigation, as required by Provision 6.1 of Order No. 93-117, and which requested State Board concurrence that the proposal fulfilled mitigation requirements contained in WQ 90-5. By letter dated October 10, 1996, the State Board concurred that the proposal satisfied requirements of Order WQ 90-5 pertaining to salt marsh conversion.
8. The original Action Plan called for a Phase II recycling project, and Order No. 93-117 contains requirements for implementing Phase II. Since its initial proposal, Phase II, at an estimated cost of \$350 million, has become prohibitively expensive. In 1995 the discharger and Board staff began discussions on alternatives to the original Phase II.
9. In 1996, the average dry weather effluent flow of 132 mgd exceeded 120 mgd, thus triggering the requirement in Resolution 91-152 for the Regional Board to hold a hearing. On December 18, 1996 the Regional Board held a hearing on this issue. It considered three options: 1. Amend the NPDES permit to limit flows to 120 mgd; 2. Direct the discharger to propose an alternative solution by June 1997; and 3. No action. The Regional Board adopted the second option.
10. On May 28, 1997 the discharger submitted a revised Action Plan to the Regional Board. The Plan calls for two projects to begin in the near term (1997-98), i.e. public education and on-site reuse. A third near term project of wastewater diversion to the Sunnyvale treatment plant is under investigation. The Plan also calls for seven projects to be done between 1997 and 2002. These are indoor water conservation, two expanded water recycling projects, industrial water recycling, inflow/infiltration reduction, and two environmental enhancement projects. Total costs of these projects are approximately \$150 million and are expected to reduce effluent flows up to 60 mgd. These projects are in addition to the Phase I of the original Action Plan, which the discharger is currently implementing, and has committed approximately \$258 million toward.
11. Effluent flows continue to exceed 120 mgd. In June 1997 the average effluent flow was 135 mgd. It is the intent of the Regional Board that if the 1998, or subsequent years, ADWEF exceeds 120 mgd, the Regional Board will hold a hearing to consider adoption of a permit amendment or enforcement order imposing an effluent flow limit of 120 mgd.
12. At the December 1996 hearing, the Regional Board directed the discharger to advance its regular assessment of wetland conversions from 1999 to 1997. This order requires the results of this assessment to be submitted by November 30, 1997. It is the intent of the Regional Board to require appropriate mitigation for any wetland losses due to the discharge. Appropriate mitigation shall be determined after consultation with resource agencies and other interested parties.
13. The amendment of waste discharge requirements for this discharge is exempt from provisions of Chapter 3 (commencing with Section 21000) of Division 13 of the Public Resources Code [California Environmental Quality Act (CEQA)] pursuant to Section 13389 of the California Water Code.
14. The discharger and interested agencies and persons have been notified of the Board's intent to amend the NPDES permit for this discharge and have been

provided an opportunity to submit their written comments and appear at the public hearing.

15. The Board, at a properly noticed public meeting, heard and considered comments pertaining to the discharge.

IT IS HEREBY ORDERED, that Order No. 93-117, is amended by the following:
(Strikeout refers to words that shall be deleted and *italics* refers to words that shall be added to the permit.)

E. Provisions

5. Salt Marsh Conversion Assessment

The discharger shall continue to document any new conversion of salt marsh habitat to fresh or brackish marsh habitat during the life of this permit in areas that are or could possibly be influenced by the San Jose/Santa Clara discharge. These areas include, but are not limited to, Artesian Slough, Coyote Creek downstream to Calaveras Point and upstream to Fremont airport, Coyote Slough, and Mud Slough downstream from the former Union Sanitary District wastewater facility. The discharger will also monitor conversion at a reference site unaffected by their discharge. The discharger shall also continue to study habitat utilization by endangered species in these areas in accordance with the Habitat Evaluation Procedure (HEP) of the Action Plan requirements. The discharger shall submit a report to the Regional Board, the California Fish and Game Department, and the US Fish and Wildlife Service ~~every five years. Since the most recent report was submitted in July 1989, the next report shall be received on July 31, 1994.~~

5.1 Task

Due Date

Submit a conversion assessment and habitat utilization plan, incorporating reference sites, acceptable to the Executive Officer.

*November 30, 1997 ~~July 31, 1994~~
and every two years thereafter*

- 5.2. *Submit a plan for mitigation of wetland losses caused by the discharge and not covered by Order No. 93-117, including a time schedule for implementation, acceptable to the Executive Officer.*

May 1, 1998

- 5.3 *Implement approved mitigation plan required by 5.2. above.*

Pursuant to schedule in approved plan required by 5.2 above.

6. San Jose Action Plan

The discharger shall implement its revised Action Plan in order to comply ~~Compliance~~ with Resolution 91-152, which accepted the discharger's original Action Plan in lieu of a 120 mgd flow limit, as directed by State Board Order No. WQ 90-5. ~~Compliance~~ shall be achieved in accordance with the tasks and time schedules below. The tasks are taken from

the City of San Jose Action Plan as revised, December 22, 1992 and May 28, 1997. For each of the following tasks, a technical report, acceptable to the Executive Officer, documenting completion of the task shall be submitted by the due date. Annual progress reports shall be submitted for the Water Conservation and Reclamation tasks.

- | 6.1 <u>Task</u> | <u>Due Date</u> |
|---|--------------------------------|
| <u>Wetlands Mitigation</u> | |
| A. Acquire or make funds available to acquire 380 acres of land that is considered suitable by the Executive Officer for salt marsh restoration to mitigate for past conversion of salt marsh to freshwater marsh. | <i>completed June 30, 1994</i> |
| B. Begin as necessary restoration of marsh area, for instance by providing assistance to USFWS in breaching dikes in appropriate locations. | June 30, 1995 |
| C. Establish a salt water marsh bank that will contain sufficient acreage to mitigate any potential conversion of endangered species' habitat due to future treatment plant discharge increases as described in State Board Order WQ 90-5 and the San Jose Action Plan (September 1991). | Submit annual progress reports |

Phase I. ~~Golden Triangle~~, 21.1 MGD Non-potable Water Reclamation

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|---|--------------------------------|
| D. Award Construction Contract | <i>completed April 1, 1995</i> |
| E. Complete Construction, Testing, and Startup | <i>May November 1, 1998 7</i> |

Phase II. ~~Expanded Area~~, 24.30 MGD Non-potable Water Reclamation

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|--|------------------------------|
| F. Award Construction Contract | December 31, 1997 |
| G. Complete Construction, Testing, and Startup | December 31, 2000 |

12 MGD Water Conservation Program

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|--|------------------------------------|
| H. Complete 12 MGD Phase I Water Conservation Program | <i>completed December 31, 1996</i> |
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- ~~I. If POTW flows exceed 115 MGD (According to flow)
(ADWEF) before non-potable reclamation
project is operational then Complete
Phase II Water Conservation Program~~

Potable Water Reclamation Demonstration Project

- J. Continue to work with the Santa Clara Valley Water District to develop a project to use reclaimed water for ~~groundwater recharge and~~ potable water supply. Submit annual progress reports

Public Education Project

- K. Implement six month public awareness campaign. January 31, 1998

On-site Reuse

- L. Divert effluent to irrigate agricultural land controlled by the discharger. October 1, 1997

Indoor Water Conservation

- M. Implement program January 31, 1998

Expanded South Bay Water Recycling

- N. Begin construction of deferred and infill projects. January 31, 1999
- O. Begin construction of southern alignment and agricultural extension projects. January 31, 2001

Industrial Water Recycling

- P. Complete pilot projects. June 1, 1998
- Q. Complete implementation plan and begin implementing the plan pursuant to the time schedules in it. September 1, 1998

Inflow and Infiltration Reduction

- R. Implement program. January 31, 1998

Environmental Enhancement Projects

- S. Implement projects. January 31, 2001

Time Schedules and Annual Reports

- T. For projects described by N, O, and S above, submit a detailed time schedule of activities that need to be done in order to achieve the due dates listed. The time schedules shall include milestones such as plan completion, obtaining permits, and beginning and finishing construction . November 1, 1998
- U. For projects described by E and L through S above, submit an annual report describing and evaluating implementation of the project. If projects are not achieving expected effluent reductions the annual report shall include proposals for implementing appropriate portions of the contingency plan required by 6.1.V. below. July 31 annually

Contingency Plan

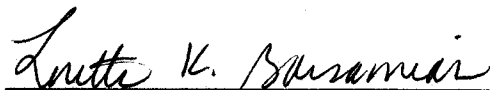
- V. Submit a contingency plan of additional measures that will be implemented on November 1, 1998 if the measures contained in the 1997 Revised Action Plan do not achieve expected ADWEF reductions and ADWEF exceeds 120 mgd ADWEF during the 1998 ADWEF period. At a minimum the contingency plan shall include the establishment of local ordinances to require additional water conservation and recycling efforts, as well as economic incentives, and accelerated implementation of the revised Action Plan. The contingency plan should be tiered, proposing specific projects for different levels of necessary flow reduction. December 31, 1997

6.2. Plan Implementation

- A. The discharger shall take all actions reasonably necessary to reduce ADWEF to less than 120 mgd or to a level necessary to prevent salt marsh conversion from further adversely impacting rare and endangered species.
- B. The discharger shall be deemed in compliance with paragraph 6.2.A., above, provided that it has timely implemented and carried out the tasks identified in the revised Action Plan, in accordance with the time schedules listed above in 6.1.K. through 6.1.U., and
1. the ADWEF for 1998, or any year thereafter, does not exceed 120 mgd, or

2. *the discharger has timely implemented and carried out the revised Action Plan and has implemented the contingency plan required by 6.1.V. above, or*
 3. *the discharger can establish that the discharge exceeds 120 mgd due to factors beyond its reasonable control, or*
 4. *the discharger demonstrates to the Regional Board that any flows above 120 mgd do not and will not further adversely impact rare and endangered species.*
- C. *By November 15, 1997 the discharger shall submit a report acceptable to the Executive Officer that identifies factors deemed to be beyond the control of the discharger, which may impact implementation of either the revised Action Plan or the contingency plan.*
- 6.3 *This Order shall serve as an amendment to a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Section 402 of the Clean water Act or amendments thereto, and shall become effective 10 days after the date of its adoption provided the Regional Administrator, U.S. EPA, has no objection. If the Regional Administrator objects to its issuance, the permit shall not become effective until such objection is withdrawn.*

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 17, 1997.



LORETTA K. BARSAMIAN
Executive Officer